

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 94-368-W/S - ORDER NO. 95-369 ✓

FEBRUARY 15, 1995

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| IN RE: Application of Hilton Head Plantation Utilities, Inc. for Approval to Transfer Its Water and Wastewater Facilities and Territory to Hilton Head No. 1 Public Service District. |) ORDER) DENYING) PETITIONS FOR) REHEARING OR) RECONSIDERATION |
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This matter comes before the Public Service Commission of South Carolina ("the Commission") on the January 23, 1995 Petition for Rehearing, Reconsideration and Reversal filed by the Town of Hilton Head Island, South Carolina ("the Town" and its Petition is hereafter referred to as "the Town's Petition") and the January 24, 1995 Petition for Rehearing or Reconsideration filed by the Hilton Head Plantation Property Owners Association, Inc. ("the POA" and its Petition is hereafter referred to as "the POA's Petition"). Both Petitions for Rehearing and/or Reconsideration request the Commission to reconsider its Order No. 94-1311 dated December 30, 1994 in which the Commission approved the transfer of Hilton Head Plantation Utilities, Inc.'s ("HHPU's") facilities and territory to Hilton Head No. 1 Public Service District ("PSD No. 1"). Both HHPU and PSD No. 1 filed returns to the Petitions for Rehearing and/or Reconsideration.

For the reasons set forth below, the Commission is of the opinion, and so finds, that both Petitions for Rehearing and/or Reconsideration should be denied.

Petition of the Town of Hilton Head Island, South Carolina

1. The Town alleges error in the Commission's finding that the rates of HHPU customers would likely be subject to "upward pressures if the transfer of HHPU to PSD No. 1 is not approved." Town's Petition, p. 2. The Town states that the Commission's finding is "speculative and ignores the substantial detriment that the transfer of HHPU imposes on the customers of HHPU." Town's Petition, p. 2. The Town also argues that the customers of HHPU would "lose the protection afforded by the oversight of the Public Service Commission with respect to any proposed rate increase and the imposition of ad valorem taxes." Town's Petition, p. 2.

The Commission discerns no error with its finding. The testimony of James Nicksa, President of HHPU, clearly outlines the need and the intent of the utility to seek rate relief in the event the transfer to PSD No. 1 is denied. Mr. Nicksa testified that denial of the transfer would result in the utility developing a supplemental water source and increasing the capacity of its current wastewater treatment plant. Based on the testimony of record, the Commission would hardly characterize its finding as speculative. While the Commission cannot quantify with certainty the amount of any increase, the Commission can certainly conclude, based on the evidence presented, that the rates of the HHPU customers would be subject to upward pressures.

The Town's argument that the customers of HHPU will lose the regulatory protection afforded by the Commission with respect to any rate increase is not persuasive. The PSD No. 1 is governed by a Board of Commissioners, and interested persons can certainly

submit their views to the Board of Commissioners. Furthermore, the testimony of witness Pitts reveals that rates are governed by the statutory provisions for public service districts and include notice and public hearing requirements. Customers will have a forum and a body to which they may address their concerns. And as discussed below, the residents of Hilton Head Plantation will likely have representation on the Board of Commissioners, which will be made up of customers of PSD No. 1 who will presumably have input on the rates of PSD No. 1 and the amount of ad valorem taxes.

2. The Town's second alleged error seems to state that the Commission should have required HHPU to demonstrate that the transfer of HHPU to the PSD No. 1 was preferable to other options. The Town complains of the following Commission finding in Order No. 94-1311:

[t]he supplemental water source will require capital expenditure. Economies of scale will play an important role in whatever additional water source is ultimately used. Consolidation of fragmented water utilities on Hilton Head Island should aid in the development of efficient and reasonably priced water services for the future. While the Commission realizes that the approval of the transfer of the facilities of HHPU and PSD No. 1 does not consolidate all of the water facilities on the Island, it is a start which the Commission believes will benefit both the customer and the utility. Order No. 94-1311, p. 7.

The Town states that "the transfer will most likely result in the permanent fragmentation of utilities and secondary water sources." Town's Petition, p. 3. The Town further states that "[d]enial of the application would simply mean that other options would have to be explored." Town's Petition, p. 3.

Apparently the Town believes the Commission should have

required or HHPU should have shown that the proposed transfer of the HHPU facilities and service area was preferable to numerous other options. The Commission does not agree with this assertion. HHPU and PSD No. 1 entered into an Agreement for the sale of the utility's facilities and service area, and HHPU submitted an Application for approval of that Agreement for the sale and transfer. Pursuant to S.C. Code Regs. 103-504 (1976) and 103-704 (1976) the Commission need only find that "a sale or acquisition is in the public interest." HHPU must only show that the transfer to PSD No. 1 is preferable to HHPU retaining and operating the system itself. The Town or other parties could have produced evidence of other options which in their opinion would have been better, but the Commission cannot speculate as to what those other options might be. The Commission must act on the evidence presented, and based on the evidence presented, the Commission found the sale and transfer to be in the public interest and approved the sale and transfer. Therefore, the Commission finds no error.

3. The Town alleges error by the Commission for approving the transfer because the majority of customers of HHPU oppose the transfer. The Town alleges "[t]here was no evidence that even with the capital expenditures that might be necessary in the future that the owners of HHPU could not make a reasonable return on its investment under a rate structure that would be fair and reasonable to the customers. Although Order (No.) 94-1311 contains findings to the effect that certain operational and other savings will be realized by approval of the transfer, there is no evidence that those savings will result in reduced rates to the customers of

HHPU." Town's Petition, p. 3.

The Commission believes that its decision to approve the transfer of the HHPU system is well substantiated by the evidence in the record. While public input and opinion is important and often helpful to the Commission in reaching its decisions, the Commission must rely on its expertise and experience in regulatory matters in deciding the matters before it. Further, the issue is not one of "reduced rates to the customers of HHPU" but rather would the denial of the transfer result in increased rates in the future for HHPU customers. The Commission drew on its experience and expertise in these matters and determined that based upon the evidence future rate increases were likely and that it was in the public interest to approve the transfer to help develop economies of scale. The Commission considered the interests of the ratepayers and upon balancing those interests with the interests of HHPU, concluded that the public interest would best be served by approval of the transfer.

4. The Town also complains about the Commission's finding that "PSD No. 1 is fit, willing, and able to provide the needed and necessary water and wastewater services to the residents of Hilton Head Plantation." Town's Petition p. 4. The Town alleges that the PSD No. 1 is not fit, willing, and able to assume the services of HHPU because PSD No. 1 has collected taxes from people currently in the PSD No. 1 service area to whom it has not provided water and/or sewer service.

The Commission disagrees with the Town's assertion. In this case the Commission has the responsibility of determining whether

or not the proposed transfer serves the interest of HHPU's existing customers. Based on the record, PSD No. 1 has provided water and wastewater service to residents of Hilton Head Island for many years. Testimony revealed that PSD No. 1 did not provide service to all customers in its service area because it is not economically feasible to do so. The testimony also divulged that certain areas of PSD No. 1's service area which are not currently being served will more likely receive service if the transfer is approved than if the transfer is not approved. Contrary to the Town's assertions, the Commission does not require utilities under Commission regulation to serve areas which cannot be economically served. Furthermore, the Commission does not see the fact that all residents in PSD No. 1's service area are not receiving service as a bar to PSD No. 1's ability to serve the HHPU customers.

5. Finally, the Town asserts that "approval of the transfer will likely result in the selection of the Savannah River as the source of supplemental drinking water." Town's Petition, p. 4. The Town alleges the Commission erred by denying the transfer based on the current HHPU customers' opposition to the use of the Savannah River as the supplemental source of water.

This allegation is without merit. The Commission continued the hearing until December 12, 1994, and instructed HHPU to provide information regarding supplemental water sources other than the Beaufort Jasper Water Authority which will use the Savannah River as its source of water. The testimony of witness Pitts revealed that PSD No. 1 has deferred final decision of the preferred source of supplemental water until after the closing of the transfer and

expansion of the PSD No. 1 Board of Commissioners. The Commission also considered the testimony that, while not guaranteed, it is likely that the new members of the PSD No. 1 Board of Commissioners will be from the Hilton Head Plantation area. Clearly, the Commission considered the interests of the HHPU customers and concluded that the transfer would be in the public interest. However, regardless of whether the expanded Board of Commissioners of PSD No. 1 chooses the Savannah River or another alternative as the supplemental source of water, the Town's speculation regarding the choice of the supplemental source of water does not constitute error by the Commission or a basis for rehearing or reconsideration.

**Petition of Hilton Head Plantation Property
Owners Association, Inc.**

1. The POA alleges error by the Commission for approving the transfer of HHPU's assets and operations to PSD No. 1 as the Agreement between HHPU and PSD No. 1 purported to transfer the right to property owned by the POA. The POA contends that it owns certain property on which are located wastewater lift stations operated by HHPU and that it owns two spray fields which the Agreement purported to transfer. Newell Bolton, Vice President of the POA, testified regarding the POA's ownership of these properties. Witness Nicksa offered testimony to rebut the testimony of witness Bolton.

The Commission has considered this issue raised by the POA and finds no error with its original decision. The Agreement between HHPU and PSD No. 1 specifically contemplates that HHPU may not own

all of the assets which comprise the system and describes the procedure by which title to any assets not owned by HHPU will be acquired by PSD No. 1 and the manner in which the cost of acquisition of those assets will be borne by the parties to the Agreement. Further, the ownership of all the assets which comprise the HHPU system is not a prerequisite for transfer of the assets and operations of HHPU in accordance with the Agreement as approved by the Commission. The Commission is not required to resolve property disputes. Disputes over ownership of property will have to be resolved prior to closing on the transfer but need not be resolved for approval of the transfer Agreement.

2. The POA asserts error by the Commission for failing to address the ownership of certain property. The POA alleges that without this property PSD No. 1 will not be able to render reliable and adequate service to the members of the POA. The Commission finds this allegation without merit. The Commission is not required to address legal issues regarding the ownership of property. [See, Order Nos. 89-975 and 89-1085, Docket No. 88-79-S. In Re: Application of Shoals Sewer Company, aff'd in Anchor Point, Inc. et. al. v. Shoals Sewer Co., et. al., 308 S.C. 422, 418 S.E.2d 546 (1992).] Further, the Agreement between HHPU and PSD No. 1 provides for the orderly transfer of assets and uninterrupted continuance of adequate and reliable service. If there is any dispute over title or ownership, then such would have to be resolved prior to closing on the transfer authorized by the Commission, or the transfer could not take place. Therefore, it is not necessary that the Commission address the issue of ownership of

certain property, and it was not error for the Commission to refrain from doing so in Order No. 94-1311.

3. The POA contends that the preponderance of the evidence does not support certain findings of the Commission concerning anticipated capital and operating costs if the transfer is not approved. In Order No. 94-1311 the Commission stated that "[t]he capital expenditures for HHPU to increase the capacity of the wastewater treatment system and the costs associated with the supplemental water source could likely result in requested increases to the rates paid by the customers of HHPU." Order No. 94-1311, p. 7.

The Testimony of witness Nicksa clearly establishes that unless the transfer is approved, the water conservation standards imposed by DHEC would require additional investment by HHPU for a supplemental water source. Additionally, witness Nicksa testified that failure of HHPU to tie its wastewater treatment facilities into those of PSD No. 1 would require the construction of new facilities for the treatment and/or transportation of wastewater which in either event will require expensive plant additions and/or upgrades. The Commission believes that the record is replete with evidence to support this finding of the Commission in Order No. 94-1311 and finds no error.

4. The POA next contends that the approved transfer will remove certain protections for the members of the POA which the regulatory process provides without equivalent protections under the framework of the PSD No. 1.

The testimony of witness Pitts revealed that the Board of

Commissioners of PSD No. 1 will be expanded from five to seven members and that it is anticipated that the new members of the Board of Commissioners will be from Hilton Head Plantation. Further, the testimony established that PSD No. 1 is a body politic and its rates are established in accordance with the statutory scheme for public service districts which requires notice and public hearing. The ratepayers will have a forum in which to express their views and, as noted above, the town will be composed of customers in PSD No. 1. Therefore, the Commission discerns no error.

5. Finally, the POA alleges that the preponderance of the evidence does not support the findings of the Commission that the interests of the customers of HHPU will experience any benefit from the transfer or that PSD No. 1 has established that it is fit, willing and able to operate the HHPU system. POA's Petition, p. 2.

The evidence revealed that PSD No. 1 has provided essentially the same utility services for other areas of Hilton Head Island for more than twenty (20) years. Based on this fact, the Commission correctly concluded that PSD No. 1 is fit, willing, and able to serve the current customers and service area of HHPU and that the transfer is in the public interest. The Commission also notes that contrary to the POA's assertion otherwise, there is no requirement by rule or statute that the Commission make a finding with respect to fitness, willingness, or ability of PSD No. 1 to provide service "...to the degree required of regulated utilities under the Commission's jurisdiction." POA's Petition, p. 2. S.C. Code Regs. 103-504 (1976) and 103-704 (1976) require only that the Commission

find a sale to be in the public interest. The Commission believes that it correctly weighed the evidence in this proceeding in concluding that this transfer is in the public interest.

Conclusion

The Commission notes that HHPU is a private business which desires to sell its assets. The record shows that HHPU has found a willing buyer in PSD No. 1 which is capable and qualified to render the same services to the current customers of HHPU. The Commission also notes that the POA was offered the system by HHPU but that the POA could not afford to purchase the system due to the capital expenditures necessary for the supplemental water source and wastewater capacity problems.


The Commission believes that the record fully supports the decision of the Commission to approve the transfer of HHPU to PSD No. 1.

IT IS THEREFORE ORDERED THAT:

1. The Petitions for Rehearing and/or Reconsideration filed by the Town of Hilton Head Island, South Carolina and by the Hilton Head Plantation Property Owners Association, Inc. are hereby denied.

2. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


CHAIRMAN

ATTEST:


Executive Director

(SEAL)